

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of

Telephone Number Portability

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CC Docket No. 95-116

RM 8535

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF OMNIPPOINT CORPORATION

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SUMMARY

The record overwhelmingly demonstrates that number portability is a critical component for a truly competitive local telephone market. Commenters from a wide cross section of the telecommunications industry and state regulators concur that number portability is in the public interest. The Commission should expeditiously establish a date-certain schedule for implementation of number portability.

Omnipoint proposes that the Commission set broad policy principles and allow the industry groups to set the appropriate network model and resolve technical issues. In addition to policy-setting, the Commission should set a definite time frame for implementation. Omnipoint recommends that number portability be implemented within the next two or three years.

Finally, it is critical for broad-based competition at the local level for the Commission to set the same implementation schedule for all competitive carriers -- both wireline and wireless. To defer implementation of number portability for wireless carriers would hamstring new wireless entrants and effective wireless competition, as well as deprive the public of the broadest competitive alternatives for local exchange service.

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Omnipoint Corporation ("Omnipoint") submits these reply comments to the many comments filed in response to the Commission's Notice of Proposed Rulemaking, FCC 95-284 ("NPRM") in the above-captioned proceeding. Omnipoint agrees with the overwhelming number of commenters that support number portability -- it is a critical element of any truly competitive local exchange market. At this stage of the proceeding, it is most important for the Commission expeditiously to set a strong national number portability policy, establish a date-certain schedule for implementation of service provider portability, and ensure that all competitive carriers -- both wireless and wireline -- are treated equally.

Based on the comments filed, Omnipoint offers an objective framework for the development of a permanent number portability implementation plan. In addition, Omnipoint believes it is very important for the Commission to set a definite schedule that will ensure portability in major markets.

I. Number Portability Is In The Public Interest

The commenters overwhelmingly agree that number portability, and especially service provider portability, is in the public interest. The public interest benefits were extolled by competitive wireline carriers, (e.g., MFS, Teleport Communications Group, Time Warner, California Cable Television Association ("CCTA")), wireless entrants (e.g., Omnipoint, members

of the Ad Hoc Coalition of Competitive Carriers, Go Communications, US Airwaves, Nextel), and interexchange carriers (e.g., AT&T, MCI, Sprint, LDDS Worldcom). Representatives of the state regulatory community, such as NARUC, the California Public Utilities Commission, and the New York Public Service Commission, agree that portability is important for Americans to benefit from effective local exchange competition.¹ Even such local exchange carriers as the Pacific Companies, and GTE,² while questioning its implementation, recognize that number portability can have a measurable and positive impact on local competition.

This widespread support from the telecommunications industry and the states for number portability is consistent with the market data showing that lack of number portability today is a major impediment to local exchange competition. In particular, the market studies by MFS and Time Warner bear out that for both business and residential customers, the lack of number portability creates a significant disincentive to switch providers from the incumbent LEC. MFS found that 81% of customers surveyed were "not very likely" or "not at all likely" to change to a comparable provider with better rates or services if it entailed a telephone number change; 98% of those surveyed found number portability to be "very important" to them.³ Time Warner's study of both residential and business telephone customers demonstrated that a competitive carrier may have to offer as much as a 10% discount on price in order to overcome the negative

¹ See also, Comments of U.S. Small Business Administration at 5 ("For competition to increase in the LEC market, number portability is absolutely essential.").

² Comments of Pacific Companies at 2; Comments of GTE at iii.

³ Comments of MFS, at 2-3; This is consistent with the nationwide MCI/Gallop poll finding that 83% of business telephone customers consider retention of their telephone number to be very important. Comments of MCI at 2. See, also, Comments of New York Public Service Commission at 3 (new entrants consistently indicate to the PSC that number portability "is the single most significant impediment to local exchange competition").

effects associated with the lack of number portability.⁴ Pacific Bell's study showed that number portability was apparently the second most important factor -- behind the price of the service itself -- that would impact a customer's decision to switch to a competing carrier.⁵ Taken cumulatively, these studies amply demonstrate that number portability is the linchpin to local competition.

Number portability can also benefit customers that choose to stay with the incumbent LEC. As some commenters observed, the resulting competitive market for local exchange service will force the LEC to react and improve its own service offerings and reduce rates, which will redound to the benefit of the LEC's existing customers.⁶ The findings of the Pacific Companies study also support this. That study found that competing carriers would have to offer a price 12% less than the LEC's price in order to persuade businesses give up their existing telephone number, as is the case with local competition without number portability.⁷ In a market with number portability, the LEC would be unable to hold onto its customers if it were to maintain its rates at a level 12% above those of its competitors. Thus, it would be required to reduce its rates to the market level to prevent erosion of its customer base. Conversely, in a market without number portability, the Pacific Companies study suggests that the incumbent LEC may be able to maintain its rates at a level 12% above those of its competitors. The

⁴ Comments of Time Warner, Appendix A at 3.

⁵ This was confirmed by the preliminary results GTE's study. Comments of GTE at 5-6.

⁶ See, Comments of U.S. Small Business Administration at 7-8; Comments of the Association for Local Telecommunications Services at 20.

⁷ Comments of Pacific Companies, Attachment A at 17.

Commission can end this potential for monopoly rents in today's local exchange market through effective and expeditious number portability rules.

Finally, number portability is in the public interest because it helps new entrants to compete against wireless and wireline incumbents by making their service offerings more attractive to customers. Encouraging this technology satisfies the Commission's general obligation to promote new technologies, 47 U.S.C. § 157, as well as other Congressional directives designed to encourage the rapid deployment of new, competitive services.⁸ The pending telecommunications legislation itself is largely intended to open up the local exchange market and, within that framework, provides for number portability. *See*, H.R. 1555, § 242(a)(4); S. 652, § 251(b)(6).

Interim measures such as remote call forwarding and flexible direct inward dialing are not an acceptable long-term solution that meets these public interest obligations. CLASS features, service quality, and 911 services, as well as a host of others, are all hampered by the introduction of these interim measures. Comments of MCI at 20-22. Moreover, because these interim "solutions" provide for all local calls to be routed through the incumbent LEC, they only reinforce the existing "bottleneck" that local competition is meant to supersede. Instead, the Commission should adopt comprehensive portability principles and set a schedule for rapid

⁸ *See*, Omnibus Budget Reconciliation Act of 1993, section 6002(d)(2) (Congress set deadlines for PCS rulemakings and issuance of PCS licenses); 47 U.S.C. § 309(j)(3)(B) (statute directs the FCC to design competitive bidding system to promote competition and rapid deployment of new technology); *id.* § 332(c)(3) (statute generally preempts state market entry barriers for CMRS providers); *id.* at § 332(c)(1)(C) (statute indicates that regulations which "promote competitive market conditions" are in the public interest).

implementation. However, if interim measures are ordered, Omnipoint agrees with the position of certain commenters⁹ that it should be offered to competing carriers for free or, at most, at incremental cost until a long-term plan is implemented. The record suggests that the offering of these services actually cost the LECs very little.¹⁰ Further, Pacific Companies' finding that incumbent LECs can charge up to 12% more without measurable loss of their customer base indicates that the LECs are likely to reap significant profits from interim solutions prior to a permanent number portability plan, even as competition is currently developing. Therefore, to maintain some degree of rough parity, LECs should offer interim solutions for free or, at most, at incremental cost. This provisional measure may also discourage LECs from delaying the transition to a permanent number portability solution.

II. FCC Should Adopt A Federal Long-Term Number Portability Strategy.

Omnipoint urges the Commission, in its initial order in this proceeding, to set out a strong and unambiguous strategy for the development of a permanent number portability plan. Omnipoint agrees with the commenters that urged the Commission to adopt broad policy principles of portability. It also agrees that a network model and technical issues are best worked out through industry standards groups. Finally, Omnipoint joins with many other commenters urging the Commission to adopt a date-certain implementation schedule that assures number portability within the next few years.

In sections A and B below, Omnipoint lays out what it believes is an objective set of policy guidelines and a reasonably expeditious implementation schedule for the Commission to

⁹ Comments of Ad Hoc Coalition of Competitive Carriers at 20; Comments of Teleport Communications Group at 15; Comments of Illinois Commerce Commission at 3-4.

¹⁰ Comments of Ad Hoc Coalition of Competitive Carriers at 20.

follow, which are generally consistent with the commenters favoring number portability.

Omnipoint certainly respects that the Commission has an enormous task in reconciling the many plans and policy concerns raised by the dozens of commenting parties. The following are offered to clarify Omnipoint's position, as a representative PCS provider, and to assist in the process of setting definitive goals and timetables.

A. Principles for Long-Term Number Portability

Omnipoint believes that the following national number portability policy criteria, if adopted expeditiously by the Commission, would set an appropriate framework for the development of a permanent number portability implementation plan.

- 1. The network model for number portability should be consistent nationwide and support implementation by all industry segments.*

Although a few states have already begun to regulate and have established market trials, number portability needs to be a federally based policy. First, the carriers themselves span across many states, with MTA and BTA PCS licensees, and RBOC territories that cover vast interstate geographic regions. It is simply inefficient and technically difficult for a single carrier to conform its system to the demands of several disparate, independent state portability plans. Second, in states that have not initiated number portability programs, lack of a federal program will slow competitive entry and true competition in those markets. The plan should be sufficiently flexible to incorporate all competing carriers -- both wireless and wireline.

- 2. All carriers in a competitive region should be obligated to provide number portability and should bear the common costs.*

For number portability to work, and yield a more competitive local exchange market, all carriers in the market must participate. The Commission's order should clarify that all carriers in a given region subject to the number portability mandates must comply and must pay their equitable share of common costs. Common costs should be allocated through nondiscriminatory charges based on each database query.

3. *Industry standards should be developed quickly to permit prompt number portability implementation.*

Omnipoint encourages the Commission to adopt as one of its policy goals a quick yet reasonable period for industry consensus on technical and network solutions. To support effective local exchange competition, it is crucial to have timely implementation of number portability.

4. *The architecture proposed should focus on service provider portability, and provide for future expansion to integrate other functionalities such as location and service portability.*

As discussed above, service provider portability is clearly the most pressing issue in this proceeding. While many commenters note that it needs more consideration, location portability is also a feature that can greatly add to the scope of competition at the local level. In addition, service portability is also important in the long-term as services converge. Therefore, the number portability plan adopted through industry consensus should be sufficiently flexible to permit additional functionality in the future.

5. *The plan should promote efficient use of numbering resources.*

The permanent number portability plan adopted should not accelerate or otherwise complicate the issue of exhaustion of numbering resources; rather, it should preserve numbering resources, to the extent feasible.

6. *The plan should avoid creation of bottlenecks or monopolies for any carrier or market segment.*

This principle is meant to ensure that the database administrator and the industry standards bodies are not themselves beholden to any one market participant. At a minimum, number portability should be implemented and administered in a neutral manner so that no

market participant controls the processes upon which that its competitors depend.¹¹ Moreover, no one group of competitors, such as the wireline carriers, should hold control over database administration or the industry standards groups, because this can also lead to database administration or implementation decisions that favor one competitive service over another. Rather, the database administration and industry standards groups should have equitable representation by all industry segments.

7. *The plan should be transparent to the customer, providing seamless service without loss of service quality or features.*

Number portability should be considered a functionality to be added to today's local exchange service.¹² Customers should not be forced to choose between number portability and the functions or services they already enjoy with their current service.¹³

8. *Each carrier should bear its own implementation and operational number portability costs.*

Carriers in a competitive environment should never be forced to compensate incumbent LECs for the costs to improve their networks. Indeed, to the extent that competing carriers design more efficient networks, or have already installed more advanced technologies, forcing such carriers to subsidize less efficient carriers creates a disincentive to invest. Therefore, each

¹¹ Similarly, interim measures (RCF and FDID) are contrary to this principle because the incumbent LEC becomes the bottleneck carrier for all of its competitors.

¹² Omnipoint agrees with the Comments of the Illinois Commerce Commission at 12 that number portability should be viewed not as a service offered by the LEC but as a function of the public switched network.

¹³ In addition, Omnipoint finds that GTE's plan for number portability, which requires all end users to make one number change, is itself contrary to the entire notion of portability. The long term portability solution should not require customers to lose the personal and business value attached to their numbers in order for them to opt into a more competitive local exchange market. *See, also*, Comments of MFS at 10.

carrier in the competitive market should bear its own network costs and assume an equitable portion of the common costs, such as database installation and maintenance.

B. Implementation of Number Portability Principles

Omnipoint recommends a three-stage approach to implementation of number portability based on dates certain established by the Commission, as follows:

October, 1995 to 1996 -- State number portability trials proceed, with industry groups meeting to reach a consensus on a national number portability plan.

October, 1996 to April, 1997 -- Industry groups come to consensus on a national number portability plan.

October, 1997 to October, 1998 -- Carriers with systems in the top 100 MSAs must offer number portability; carriers not within those markets must offer number portability within a reasonable period of time after requested to do so by a facilities-based carrier in the same market area.

Omnipoint believes that this time frame for implementation is generally consistent with that offered by many commenters.¹⁴ Further, the policy-setting role of the Commission, and the delegation of network and technical solutions to industry standards groups, are consistent with the recommendations of many commenters.¹⁵

1. State Trials Should Focus the Debate for Industry Groups.

Omnipoint believes that the broad principles outlined in Section II(A) above, in conjunction with the results of the on-going state trials, provide the needed policy and technical guidance required by industry groups to develop a consensus plan. The various state number

¹⁴ See, e.g., Comments of Ad Hoc Coalition of Competitive Carriers at 15; Comments of General Communications, Inc. at 3; Comments of Ericsson at 2-3.

¹⁵ See, e.g., Comments of PCIA at 3-4, 8; Comments of USTA at 4-5; Comments of Teleport Communications at 11, 14-15.

portability trials in New York, California, Washington, and Illinois are important experiments for the resolution of various technical, billing, and service issues, and should be encouraged. The state trials will identify the implementation issues, as well as yield answers and significant information about all of these issues.

With the results of the state trials and the Commission's portability principles as guidelines, industry consensus groups can then form a national number portability plan.¹⁶

2. Implementation Should Begin As Early As Possible.

Omnipoint generally agrees with the Ad Hoc Coalition for Competitive Carriers that service provider portability should be implemented within a 24 month time frame for carriers in the top 100 MSA markets.¹⁷ Comments of Ad Hoc Coalition at 15. However, Omnipoint believes that, should the industry consensus and technical issues require additional time, implementation should take no more than three years. Thereafter, implementation in all other markets should proceed within a reasonable period of time after a facilities-based carrier in the market requests number portability. *Compare, id.* at 15-16.

¹⁶ Unfortunately, number portability plans adopted on a state-by-state basis are likely to lead to gross inefficiencies. While Omnipoint believes that the states' efforts continue to be important, disparate number portability requirements and implementation schedules, perhaps from one contiguous state to another, are likely to be a significant obstacle to rapid deployment of number portability.

Assigning the resolution of technical issues to industry groups, with FCC policy guidance, review, and enforcement powers, is consonant with the Commission's recent approach toward reexamination of the NANP, as adopted in, *In the Matter of Administration of North American Numbering Plan, Report and Order*, FCC 95-283, CC Docket No. 92-237 (released July 13, 1995).

¹⁷ *See also*, Comments of America's Carriers Telecommunications Ass'n at 7 (advocates implementation within a 24 month period); Comments of Ass'n for Local Telecommunications at 10 (same).

III. Implementation Deadlines for Number Portability Should Apply Equally to Wireless and Wireline Carriers.

Omnipoint opposes CTIA's position that implementation of number portability for wireless carriers should be deferred. Comments of CTIA at 4-9. CTIA claims that wireless carriers should not be held to the same implementation schedule as wireline carriers because cellular carriers are not technically prepared for number portability and because number portability is less important in the wireless market.

The Commission should view these various objections of the incumbent monopoly wireless industry with great skepticism. While CTIA complains that cellular providers are not technically able today to provide for number portability, it fails to explain why PCS operators, or other CMRS providers, should be similarly exempted from number portability requirements. Further, while CTIA may raise cellular-specific issues that need to be resolved, it offers no timetable for their resolution, and fails to show that these cannot be worked out within the same time frame it will take other carriers to work out their particular implementation issues. Moreover, cellular providers in the top markets, where competition and the need for number portability is most imminent, have experienced extraordinary growth and profits. *See Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, First Report, FCC 95-317, Tables 9 - 13 (released August 18, 1995) ("First Report").* Although these companies can afford to resolve their technical issues, they are unwilling to do so because it will mean additional competition in wireless telephony. But, while the cellular industry will do what it can to stem the tide of PCS competition, the Commission's obligation clearly lies with promoting competitive prices and viable service alternatives for the American public. In this proceeding, the Commission should facilitate customers' choice for better, more

affordable services offered by a competing wireless carrier and require all carriers -- including cellular -- to comply with a single, expeditious number portability plan.

In addition, while CTIA acknowledges that "the creation of a [number portability] plan that provides solutions for both wireline and wireless systems is essential to the development of competition between telecommunications service providers," Comments of CTIA at 2, it argues that number portability is not as important in the wireless market. Omnipoint strongly disagrees. First, while CTIA claims that the wireless market is more competitive than the wireline market, it is indisputable that cellular operators are still the dominant provider. PCS operators, like wireline CAPs, will succeed in interjecting significant competition by dislodging the incumbents' embedded customer base. Further, wireless and especially PCS providers are, in the words of Chairman Hundt, "the raiders of the local loop."¹⁸ CTIA's position seems to ignore the fact that PCS and other CMRS providers can and will compete directly for the local exchange market against wireline providers,¹⁹ and so number portability is just as critical for wireless competitors. *See also*, Comments of Ad Hoc Coalition at 13 ("Portability between CMRS carriers and wired carriers is especially significant."). Because wireless entrants will offer services competitive with the traditional local exchange, CTIA's throw-away assumptions that the mobile number is less valuable to customers and that mobile units send more calls than they receive are simply not consistent with tomorrow's competitive marketplace.

¹⁸ "Hundt calls Wireless Industry 'Dawn of New Age of Competition'," Washington Telecom News (February 6, 1995) (Chairman Hundt, in speech at CTIA convention, calls wireless operators "raiders of the local loop").

¹⁹ No doubt, CTIA's position on this matter, and its position on number portability generally, is affected by the fact that almost 60% of cellular customers are served by operators owned by the wireline LEC. *See*, First Report at ¶ 26.


CONCLUSION

Omnipoint urges the Commission to adopt number portability regulations for wireline and wireless carriers consistent with the principles and the date-certain implementation schedule recommended above.

Respectfully submitted,

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